

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

LLOYD F. AUDETTE,

Plaintiff,

V.

UMASS CORRECTIONAL HEALTH PROGRAM, a program of the UNIVERSITY OF MASSACHUSETTS MEDICAL SCHOOL; KATHLEEN M. DENNEHY, Commissioner of Correction; LOIS RUSSO, Superintendent of Souza-Baranowski Correctional Center, and her predecessors and successors; AUGUSTIN ENAW, M.D.; and CHARLIE BLACK,

Defendants.

CIVIL ACTION  
NO. 05-10403-DPW

## **JOINT MOTION TO STAY DISCOVERY**

Plaintiff, Lloyd Audette (“Mr. Audette”), and defendants, UMass Correctional Health, Augustin Enaw, M.D., and Charlie Black (collectively, “UMCH”), and Kathleen M. Dennehy, Commissioner of Correction, and Lois Russo, Superintendent of Souza Baranowski Correctional Center (together, “DOC”), respectfully move this Court to stay discovery in this matter pending a decision on Plaintiff’s Motion to Amend Complaint. As grounds for this motion, the parties state as follows:

1. On November 28, 2006, Mr. Audette filed a Motion to Amend Complaint, seeking leave to file a Second Amended Complaint adding as parties David R. Stone, M.D. and Ioana Bica, M.D., doctors who provide or have provided medical treatment or consulting services at Souza-Baranowski Correctional Center, as well as UMCH employees or contractors, Mark Schnabel, N.P., Angela D’Antonio, N.P., and Philip Tavares, M.D. Mr. Audette’s Motion to Amend is now pending before the Court.

2. Mr. Audette and the DOC have reached an agreement in principle regarding settlement of this matter, and are presently finalizing documents to memorialize that agreement. Mr. Audette and the DOC intend to file a Stipulation of Dismissal with Prejudice prior to Mr. Audette filing the Second Amended Complaint, if leave is granted to do so, and will not name the DOC defendants as parties in the Second Amended Complaint.

3. Under the current Scheduling Order, the parties fact discovery deadline as to all named parties passed on November 28, 2006. Mr. Audette is required to serve his expert report on December 13, 2006, and UMCH is required to serve its expert report on January 12, 2007, with expert depositions to follow. The parties agree, however, that the Court's decision on Plaintiff's Motion to Amend Complaint may have a material impact on scheduling of the above events. The parties have deferred the deposition of Mr. Audette pending the Court's decision on Plaintiff's Motion to Amend Complaint, and respectfully submit that discovery deadlines should be stayed pending resolution of that motion. Notwithstanding this request, it is UMCH's contention that all non-expert discovery as to claims against UMCH defendants has been completed (with the exception of the previously noticed 30(b)(6) deposition of UMCH) and no further fact discovery as to these defendants should be conducted without leave of court.

4. In the event the Court allows Plaintiff's Motion to Amend Complaint, the parties anticipate that there would be an extension of the discovery period as to the newly added defendants, in order to allow discovery relevant to their defense of this matter. Mr. Audette has requested in connection with Plaintiff's Motion to Amend Complaint that the Court schedule a Rule 16 conference to address these issues. Expert discovery would fall within the ambit of that conference and be scheduled accordingly.

5. A brief stay of discovery will not materially affect scheduling in this matter. If the Court allows Plaintiff's Motion to Amend Complaint, then a new discovery schedule will be established after a Rule 16 conference. If the Court denies Plaintiff's Motion to Amend Complaint, then UMCH and Mr. Audette will work cooperatively to complete discovery prior to the status conference scheduled for April 12, 2007.

WHEREFORE, the parties respectfully move that the Court stay discovery in this matter pending decision on Plaintiff's Motion to Amend Complaint.

Respectfully submitted,  
**LLOYD F. AUDETTE,**  
By his attorneys,

/s/ Brandon L. Bigelow  
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Respectfully submitted,  
**UMASS CORRECTIONAL HEALTH,  
AUGUSTIN ENAW, M.D., and CHARLES  
BLACK,**  
By their attorneys,

/s/ James A. Bello  
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Respectfully submitted,  
**KATHLEEN DENNEHY and LOIS RUSSO,**  
By their attorney,

/s/ David J. Rentsch  
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Dated: December 15, 2006

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing document was served on counsel for each other party electronically via the CM/ECF system on December 15, 2006.

/s/ *Brandon L. Bigelow*  
Brandon L. Bigelow